# RECENT IMPORTANT DECISIONS

ADVERSE POSSESSION—POSSESSION IN ONE COUNTY CARRIES POSSESSION TO CLAIMED BOUNDARIES IN ANOTHER COUNTY.—In an action of ejectment for a tract of land lying in two counties, the defendant claimed title by adverse possession under color of title. The question was whether actual possession in one county would give constructive possession in the other county. *Held,* since the enactment of Section 62, Civil Code, allowing an action for the recovery of real property to be brought in the county in which the land lies, or any part thereof, actual possession in one county gives constructive possession in the other. *Bevins* v. *Blackburn,* 225 S. W. 372 (Ky., 1920).

Prior to the above provision, when the action of ejectment must have been brought in the county in which the land lay, actual possession in one county under color of title to a tract of land lying in two counties did not give constructive possession in the other. *Hord* v. *Walker,* 5 Litt. 22 (Ky., 1824); *Souder* v. *McMillen Heirs,* 4 Dana 456 (Ky., 1836). The court undoubtedly considered itself justified in refusing to extend the constructive possession beyond the county in which there was actual possession, upon the ground that ejectment could only be brought against one in actual possession. If such were the case, a disseizee would lose his seisin in the county in which the disseizor had only a constructive possession, but would at no time during the statutory period be able to recover possession. An adverse possessor under color of title, in actual possession of a part and claiming to the extent of the boundaries embraced in his deed, may, however, bring ejectment for a dispossession of that part of the tract over which he had only a constructive possession. *Hicks* v. *Coleman,* 25 Cal. 122 (1864). He may also bring trespass under the same circumstances. *Parker* v. *Wallis,* 60 Md. 15 (1882); *Welsh* v. *Louis,* 31 Ill. 446 (1863). Both ejectment and trespass, q. c. f., lie for injuries to a possessory right. It seems, therefore, that if one can maintain ejectment and trespass for the invasion of a constructive possession that ejectment will lie *against* one who has only a constructive possession. As a disseizee would thus be able to recover his possession in both counties, there seems to be no sound reason for saying that the same rule should not apply to a tract of land lying in two counties that apply to a tract of land lying in one county. In *Hord* v. *Walker, supra,* the court for authority relied on Coke's statement that to revest seisin in a tract of land lying in two counties there must be a reëntry in each county. COKE ON LITT. 252 b. But Coke was discussing seisin, not possession. It is submitted that the court in the principal case might have arrived at the same conclusion in the absence of any statutory provision relating to ejectment.

ASSIGNMENTS—INSTRUCTION TO DEBTOR TO PAY DEBT TO THIRD PERSON.—A father told his sons that if they would pay the unpaid purchase money debt evidenced by bonds he would give them his farm to belong to them

after his death. The sons promised to pay the debt. Thereupon the father made a will devising to the sons the farm charged with the debt. The father himself paid part of the debt before his death and informed the sons that they were indebted to him in the amount paid. The sons admitted the debt and offered to pay the father, but the latter refused payment, saying that he wanted them to pay it to his daughters. The sons agreed with the father that they would pay the daughters. *Held,* a gratuitous equitable assignment to the daughters which remained executory and could not be given effect. *Poff* v. *Poff* (Va., 1920), 104 S. E. 719.

The court thought that the transaction was not intended to operate as a transfer in trust. Compare *Russell's Executors* v. *Passmore* (Va., 1920), 103 S. E. 652; 19 MICH. L. REV. 420. If intended to take effect as an equitable assignment, it must of course be executed to be binding upon the donor's estate. An executed gift was thought impossible because there was no documentary evidence of the debt. See SCOTT'S CASES ON TRUSTS, 168, note. And of course an executory gift could not be given effect as a declaration of trust. See *ibid.*, 151, note. Would it have been possible, however, to decree a constructive trust on the theory that the father refrained from adding a codicil to his will in reliance upon the sons' promise to pay the daughters? See *Ahrens* v. *Jones,* 169 N. Y. 555; 13 COLUMB. L. REV. 343.

CARRIERS—THE COMMODITIES CLAUSE OF THE HEPBURN ACT.—In a suit to dissolve the intercorporate relations between the Lehigh Valley Railroad Co., the Lehigh Valley Coal Co., and the Lehigh Valley Sales Co. as a combination in restraint of trade in violation of the Anti-Trust Act, and also as transporting coal over the line of the defendant's railroad in violation of the commodities clause of the Hepburn Act, it was shown that the coal company and the railroad company agreed to the organization of the sales company, limiting subscriptions to the stock of the sales company to the stockholders of the railroad company. The officers and directors of the three companies were so interlocked as to result practically in one management. The coal company contracted to sell all of its coal to the sales company. *Held,* that the arrangement "was a mere device to evade the commodities clause of the Interstate Commerce Act, and therefore void." Case remanded to the District Court with instructions to enter a decree dissolving the combination effected. *U. S.* v. *Lehigh Valley R. Co.* (U. S., Dec., 1920), 41 Sup. Ct. 104.

And so comes to grief another attempt to take advantage of the illusive hope held out by Mr. Justice White in *U. S.* v. *D. & H. Co.,* 213 U. S. 366, in which it was said the inhibitions did not include "articles or commodities manufactured, mined, produced or owned by a *bona fide* corporation in which the railroad company is a stockholder." Events have abundantly justified the prediction of Justice Harlan in his dissent that if this were permitted it would be a device to evade the law. Justice, now Chief Justice, White preserves his consistency, for in this case, as in *U. S.* v. *Reading Co.,* 40 Sup. Ct. 425, reviewed in MICH. L. REV., *ante,* page 221, he dissents from the doctrine, though now he concurs with the decision as settled law. Fourteen years have passed, and still the railroads are trying out devices, and perhaps they